

Private foundation status; effect of section 508(b) presumption. An organization formed before October 9, 1969 is not precluded from classification as other than a private foundation merely because it failed to notify the Service by the March 22, 1973 deadline given in the regulations that it is not a private foundation as required by section 508(b); its status as other than a private foundation may be established by submitting a request for a determination letter to the local District Director.

The Internal Revenue Service has been asked whether an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 is precluded from classification as other than a private foundation because it failed to notify the Service within the deadline given in the Income Tax Regulations that it is not a private foundation as required by section 508(b).

The organization in question was formed in 1960. In 1961, it applied for recognition of exemption and in the same year received a ruling from the Service recognizing its exemption under section 501(c)(3) of the Code. Since formation the organization's operations have been consistent with exemption under section 501(c)(3).

In 1971 and again in 1973 the organization was advised by the Service to file the Notice required by section 508(b) of the Code.

The organization did not do so by March 22, 1973, the deadline provided in the regulations under section 508(b). However, after March 22, it requested a determination that it is described in section 509(a)(2). In connection with its request for a determination the organization submitted information showing that it is, in fact, described in section 509(a)(2) and has been since October 9, 1969.

Section 508(b) of the Code provides that an organization described in section 501(c)(3) must notify the Service as provided by regulations that it is not a private foundation or it will be presumed to be a private foundation.

Section 1.508-1(b)(2) of the regulations provides that an organization must file its section 508(b) Notice within 15 months from the end of the month in which it is formed, or before March 22, 1973, whichever is later.

Section 509(a) of the Code defines a private foundation as a domestic or foreign organization, described in section 501(c)(3) other than one described in sections 509(a)(1), (a)(2), (a)(3), or (a)(4). Section 509(a)(2), generally, describes organizations that receive broad public support.

The section 508(b) presumption does not determine whether or not an organization is a private foundation. The section 508(b) presumption is rebuttable, and if an organization is, in fact,

described in sections 509(a)(1), (a)(2), (a)(3), or (a)(4) of the Code, it is not a private foundation even though (pursuant to section 508(b)) it may be presumed to be one. However, in order for the Service to recognize that such an organization is not a private foundation it must establish such status by submitting a request for a determination letter to the local District Director.

Accordingly, the Service recognizes that the organization described above is not a private foundation since it has established that it is, in fact, described in section 509(a)(2) of the Code and has been since October 9, 1969.